2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

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Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons

Working paper submitted by New Zealand on behalf of the New Agenda Coalition (Brazil, Egypt, Ireland, Mexico, New Zealand and South Africa)

Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons:

Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.

Executive summary

1. The Final Document of the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons affirmed that "all States need to make special efforts to establish the necessary framework to achieve and maintain a world without nuclear weapons".

2. Members of the New Agenda Coalition believe that it is high time to elaborate the "effective measures" relating to nuclear disarmament which are required by article VI of the Treaty on the Non-Proliferation of Nuclear Weapons and to heed the calls for urgency made by previous Review Conferences and the General Assembly, among others. States parties must now engage in serious discussions on the legal framework for a world without nuclear weapons and advance the necessary preparatory work. Moving forward on article VI will enhance the Treaty's credibility and rectify the imbalance in implementation between nuclear disarmament and nuclear non-proliferation. The "effective measures" required by article VI will also serve to give the Treaty's existing prohibitions additional normative support.

3. This paper seeks to elucidate the legal approaches capable of advancing "effective measures" with a view to facilitating a meaningful exchange as well as decision-making on this issue at the 2015 Review Conference. The New Agenda Coalition:

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(a) Expects dedicated sessions of the subsidiary body in Main Committee I to be devoted to an exploration of the legal approaches capable of advancing "effective measures";

(b) Calls for decisions to be taken to advance "effective measures" with appropriate follow-up in all disarmament forums as well as by the General Assembly.

Options that have been suggested for the achievement and maintenance of a world free of nuclear weapons

4. In a working paper submitted in 2014 to the Preparatory Committee for the 2015 Review Conference, the New Agenda Coalition outlined a range of options that had been suggested for achieving and maintaining a world free of nuclear weapons (see NPT/CONF.2015/PC.III/WP.18, para. 29). Four options were identified:

(a) A **comprehensive nuclear-weapons convention**, which would set out general obligations, prohibitions and an effective basis for time-bound, irreversible and verifiable nuclear disarmament;

(b) A **nuclear-weapons-ban treaty**, which would establish the key prohibitions necessary for the pursuit, achievement and maintenance of a world free of nuclear weapons. Such a treaty could, but need not, additionally set out practical arrangements required for implementing and overseeing effective, time-bound, irreversible and verifiable nuclear disarmament;

(c) A **framework agreement comprising mutually supporting instruments** aimed at achieving and maintaining a world free of nuclear weapons. These would work in concert, within a legal framework, to establish the key prohibitions, obligations and arrangements for time-bound, irreversible and verifiable nuclear disarmament;

(d) A **hybrid arrangement** that might include elements of all or any of the above options, or new elements.

5. Following the 2014 meeting of the Preparatory Committee, the General Assembly, by an overwhelming majority, adopted resolution 69/37, which urged States parties to the Treaty on the Non-Proliferation of Nuclear Weapons to "explore, during the 2015 Review Conference, options for the elaboration of the effective measures envisaged in and required by article VI of the Treaty" (see para. 15).

6. The New Agenda Coalition continues to believe that the pursuit of any of the options outlined in the above-mentioned working paper (see para. 4) would advance the implementation of article VI. Equally, any of them would be fully compatible with the object and purpose of the Treaty. The obligation to pursue effective measures towards nuclear disarmament is one that applies equally to all States parties to the Treaty and not just the nuclear-weapon States. The views and input of nuclear-weapon States on these issues would be greatly welcomed but there is no legal impediment to exploring the options outlined in the working paper and to moving forward, even if they choose not to engage. Any of these options would have a normative impact, no matter how broadly or narrowly the respective instrument or framework of instruments was drafted. Any of them would be able to give the Treaty's existing prohibitions additional normative support.

7. The New Agenda Coalition acknowledges that for those States parties to the Treaty that are non-nuclear-weapon States, the key obligation in any new legal instrument would effectively be a reiteration of their existing obligation under article II of the Treaty. Reiteration would not, however, undermine this obligation: it would, indeed, strengthen it (in the same way that reiteration, for example, of the right to life in a range of human rights treaty regimes has strengthened, not undermined, that right). A comparable example drawn from the disarmament context is the way in which the prohibition against using chemical or biological weapons in the Geneva Protocol of 1925 laid the normative foundations for the Chemical Weapons Convention and the Biological Weapons Convention (and yet continues in force to this day).

A choice between two legally distinct approaches

8. The New Agenda Coalition has undertaken further analysis, including from an international legal perspective, of the four options for achieving and maintaining a world without nuclear weapons outlined in the above-mentioned working paper. In the light of this analysis, it is apparent that, in implementing article VI of the Treaty, States parties are, in effect, presented with a choice between two legally distinct approaches. In deciding which of these two approaches to take, States must assess — from both a political and technical perspective — the advantages and disadvantages of each as an "effective measure" for achieving nuclear disarmament, which remains the goal of article VI.

9. The first approach involves the negotiation of a stand-alone agreement, whether a comprehensive convention or a ban treaty (the first and second options listed in para. 4 above). The difference between the two agreements lies not in their architecture — they are indeed points on the same legal spectrum — but in their location along that spectrum in terms of scope and level of detail. In commencing a negotiation under this approach, States parties would need to decide between the broader and more detailed comprehensive convention at one end of the spectrum and the ban treaty towards the other, recognizing that the latter could, but need not, prescribe to some extent the legal and technical arrangements needed for the achievement and maintenance of a world free of nuclear weapons.

10. The second approach, that of a framework agreement comprising mutually supporting instruments (the third option listed in para. 4 above), is architecturally distinct from the comprehensive convention/ban treaty approach in that it does not aim to create a set of obligations in a single stand-alone agreement. Instead, it establishes obligations pursuant to a "head", or primary, agreement that would be negotiated first and that would formulate the objectives of the overall regime, establish broad commitments of the States parties and institute a general system of governance for subsequent negotiations. These subsequent "second-tier" negotiations would then articulate more detailed rules on discrete aspects of the overall regime (often through a set of individual protocols). States parties will need to decide, in the course of the negotiation, how broadly to define the scope of the head agreement and the second-tier protocols, and also what process to establish for negotiating these protocols.

Future focus

11. The New Agenda Coalition believes that the time is long past for all States parties to deliver upon their repeated expressions of political commitment to implement article VI and eliminate nuclear weapons, and to take substantial action to safeguard future generations from the catastrophic effects of a nuclear weapon detonation, whether by accident, miscalculation or design. The New Agenda Coalition calls for a serious discussion on the Treaty provision requiring all States parties to pursue and elaborate "effective measures" relating to nuclear disarmament. As presented in this paper, the New Agenda Coalition believes that work to advance article VI's "effective measures" should now focus on enabling a choice between two legal approaches: the stand-alone comprehensive convention/ban treaty or the framework agreement of mutually supporting instruments.

Recommendations

12. The New Agenda Coalition looks forward to a substantive discussion at the 2015 Review Conference on the "effective measures" required by article VI. To this end, the New Agenda Coalition:

(a) Expects dedicated sessions of the subsidiary body in Main Committee I to be devoted to an exploration of the legal approaches capable of advancing "effective measures";

(b) Calls for decisions to be taken to advance "effective measures" with appropriate follow-up in all disarmament forums, as well as by the General Assembly.